

Senate Finance, Ways, and Means Committee

Amendment No. 1 to SB0349

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Comm. Amdt. _____

AMEND Senate Bill No. 349*

House Bill No. 1781

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 67-4-507, is amended by deleting the section in its entirety.

SECTION 2: Tennessee Code Annotated, Title 67, Chapter 4, is amended by adding the following as an appropriately numbered new part.

Section 67-4-2201. This part may be cited and referred to as the "Coin-Operated Amusement Machine Tax Act."

Section 67-4-2202.

(a) The state tax imposed by this part shall be the exclusive tax levied on bona fide coin-operated amusement machines. No local government may impose any additional tax, fee, or assessment of any kind on such machines. Nothing contained herein shall affect any person's liability for state or local sales or use tax which is imposed pursuant to chapter 6 of this title for the privilege of selling or using such devices. The receipts from bona fide coin-operated amusement machines shall not be the basis of tax under chapter 6 of this title.

(b) The supervision and collection of the taxes imposed by this part is under the direction of the department of revenue. The commissioner of revenue is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, title 4, chapter 5.

(c) The taxes imposed by this part shall be administered and collected on an annual basis for the privilege of owning bona fide coin-operated

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amusement machines used commercially for public play for tax years beginning on July 1 and ending on the following June 30.

Section 67-4-2203. As used in this part, unless the context otherwise requires:

(1) "Applicant" or "licensee" means owner as defined in this section, who is licensed to do business in this state, including an owner's officers, directors, shareholders, individuals, members of any association or other entity not specified, and, when applicable in context, the business entity itself.

(2) "Bona fide coin-operated amusement machine" means any coin or token operated game, machine or device which, as a result of depositing a coin, token or other object, automatically or by or through some mechanical or electronic operation involving skill, chance, or a combination thereof, affords music, amusement, or entertainment of some character without vending any merchandise. "Bona fide coin-operated amusement machine" does not include any bona fide merchandise vending machines as defined in § 67-4-506, or any device operated for the purpose of unlawful gambling.

(3) "Business owner or business operator" means an owner or operator of a business where one or more bona fide coin-operated amusement machines are available for commercial use and play by the public.

(4) "Commissioner" means the commissioner of revenue.

(5) "Machine tax" means the annual per machine tax which every owner of a bona fide coin-operated amusement machine in commercial use must pay.

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(6) "Master license" means the certificate which every owner of a bona fide coin-operated amusement machine must obtain and display in the business owner's or business operator's place of business where the machine is located for commercial use by the public for play, in order to operate the machine in this state legally.

(7) "Owner" means any person, individual, firm, company, association, or other business entity owning any bona fide coin-operated amusement machine. "Owner" does not include an individual who owns a bona fide coin-operated amusement machine solely for personal use and who does not make the machine available for play by others at a charge, either directly or indirectly.

(8) "Sticker" means the decal issued for each bona fide coin-operated amusement machine to show proof of payment of the machine tax.

Section 67-4-2204.

(a) There is hereby levied an annual license tax on the privilege of owning bona fide coin-operated amusement machines for commercial use by the public. Prior to exercising such privilege, every owner who offers others the opportunity to play for a charge, whether directly or indirectly, any bona fide coin-operated amusement machine shall pay to the commissioner the annual license tax as follows:

(1) Level one license. An owner owning fifty (50) or fewer machines shall pay a master license tax of five hundred dollars (\$500.00).

If after an owner obtains a level one license for a tax year, the owner

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acquires additional machines, so that the owner owns more than fifty (50) but no more than two hundred (200) machines, such owner shall pay an additional master license tax of five hundred dollars (\$500).

(2) Level two license. An owner owning more than fifty (50) machines but no more than two hundred (200) machines shall pay a master license tax of one thousand dollars (\$1000). If after an owner obtains a level two license for a tax year, the owner acquires additional machines, so that the owner owns more than two hundred (200) machines, such owner shall pay an additional master license tax of one thousand dollars (\$1000).

(3) Level three license. An owner owning more than two hundred (200) machines shall pay a master license tax of two thousand dollars (\$2000).

(b) Upon payment of the annual master license tax, the commissioner shall issue the appropriate master license certificate to the owner. Each master license certificate shall contain the name and address of the owner.

(c) An owner may obtain a six (6) month master license on or after January 1 of a tax year by paying a tax of two hundred fifty dollars (\$250) for a level one license; five hundred dollars (\$500) for a level two license; and one thousand dollars (\$1000) for a level three license. Such license shall expire on June 30 of the tax year.

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(d) A copy of an owner's master license certificate shall be prominently displayed at each location where the owner has a bona fide coin-operated amusement machine available for commercial use and for play by the public.

(e) No refund or credit of the master license tax levied in this section may be made to any owner who ceases to own bona fide coin-operated amusement machines prior to the end of any tax year.

(f) The commissioner may issue a duplicate original master license certificate, if an original master license certificate has been lost, stolen, or destroyed. If an original master license certificate is lost, stolen, or destroyed, a sworn, written statement must be submitted explaining the circumstances by which the master license was lost, stolen, or destroyed, and a replacement fee of one hundred dollars (\$100) paid, before a duplicate original master license certificate may be issued.

(g) A master license is effective for a single business entity.

(h) A master license is nontransferable.

(i) Application for renewal of a master license must be made to the commissioner by June 1 of each year. An owner, who properly completes a renewal application, timely files the renewal application with the commissioner, and remits all taxes and fees with the renewal application, may continue to offer bona fide coin-operated amusement machines for play by the public after June 30 if the renewal license and new stickers have not been issued, provided that the owner displays with the expired master license in each location, where coin-

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operated amusement machines are offered for play by the public, a copy of a receipt showing that the application for the renewal license was timely filed.

(j) An original application for a master license, an application for a six (6) month license, or a renewal application must be accompanied by the appropriate taxes and fees.

(k) The commissioner shall give written notice to an applicant or licensee of any denial of an application or renewal application or revocation of a master license.

(l) The commissioner shall not renew a master license and shall suspend or revoke a master license, if the commissioner finds that the applicant or licensee owes to the state any taxes, fees, delinquent taxes or fees, or penalties resulting from delinquent taxes, or that an owner has failed to display the master license at any location where a bona fide coin-operated amusement machine is available for commercial use and for play by the public, or that an owner has made a machine available for commercial use and for play by the public without a valid sticker attached.

(m) Acceptance and display of a master license certificate issued under this part constitutes consent by the owner and by the business owner or business operator of the business where a bona fide coin-operated amusement machine is available for commercial use and for play by the public that the commissioner and his agents may freely enter the business premises during normal business hours for the purpose of ensuring compliance with this part.

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(n) An owner shall attach identification to each bona fide coin-operated amusement machine showing the owner's name, address, and phone number.

Section 67-4-2205.

(a) For the privilege of owning a bona fide coin-operated amusement machine offered for commercial use and for play by the public, there is additionally levied a machine tax of ten dollars (\$10.00) for each bona fide amusement machine. The owner shall pay the machine tax to the commissioner prior to making a machine available for commercial use and for play by the public. If, after payment of the master license tax and machine taxes, an owner obtains additional bona fide coin-operated amusement machines, the owner shall pay to the commissioner a ten dollar (\$10.00) machine tax for each machine, prior to making a machine available for commercial use and for play by the public. No refund or credit of a machine tax levied in this section shall be made.

(b) The commissioner shall issue a sticker to evidence the payment of the machine tax. The owner shall securely affix a sticker to each machine available for commercial use and for play by the public. Owners may transfer stickers from one machine to another and from location to location so long as all machines in commercial use available for play by the public have a sticker and the owner uses the stickers only for machines that it owns.

Section 67-5-2206.

(a) A penalty of fifty dollars (\$50.00) shall be assessed by the commissioner for every machine which is available for commercial use and for

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play by the public without a sticker or which is located in a business where the master license of the owner is not displayed.

(b) An owner who knowingly makes a bona fide coin-operated amusement machine available for commercial use and for play by the public without a current master license or without a sticker affixed to the machine commits a Class A misdemeanor. A business owner or business operator who knowingly permits bona fide coin-operated amusement machines to be operated by the public on the business' premises without display of a copy of the owner's master license or without a sticker affixed to each machine commits a Class A misdemeanor.

(c) Intentional removal of a machine tax sticker from a bona fide coin-operated amusement machine by the owner, except as permitted in § 67-5-2205(b), or by a person other than the owner is a Class C misdemeanor.

(d) Any bona fide coin-operated coin machine available for commercial use and play by the public in a location that does not have a copy of the owner's master license displayed or any bona fide coin-operated amusement machine available for commercial use and play by the public without a valid sticker affixed is subject to confiscation as contraband. Prior to confiscation, the owner shall have thirty (30) days in which to remedy any noncompliance with the provisions of this part, including payment of any penalties.

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Section 67-5-2207. Nothing in this part, including payment of the taxes or fees provided for herein, shall be construed to make legal an otherwise illegal device, or to authorize or permit gambling on any device whatsoever.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. This act shall take effect upon becoming law, the public welfare requiring it.